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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/606,391

06/26/2003

C. Benjamin Wooley

INT-5002

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27777

7590

09/08/2004

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EXAMINER

COLLINS, DARRYL J

ART UNIT

PAPER NUMBER

2873

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,391	Applicant(s) WOOLEY, C. BENJAMIN	
	Examiner Darryl J. Collins	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-14 is/are allowed.
- 6) ☒ Claim(s) 1,4-6,15 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20030626</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 5, 6, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris et al. Morris et al teaches a progressive ophthalmic lens wherein the lens surface is optimized using a merit comprising components for controlling image blur, mean power error and having cosmetic constraints (column 12, lines 21-61) as claimed in independent claim 1, a blur merit function expressed in terms of the square of the vertical and horizontal eye rotation (column 12, lines 25 and 41-43) as claimed in dependent claims 4 and 6, a power merit function expressed in terms of a power error and a difference between a target power and an actual power (column 12, line 27) as claimed in dependent claim 5 and a method for optimizing coefficients to describe the lens surface (column 14, lines 44-63) as claimed in dependent claim 15.

Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Menezes et al. Menezes et al teaches a progressive addition lens having a first and second progressive addition surface (column 2, lines 46-57) wherein an unwanted astigmatism is greater than 0.25 diopters (column 6, lines 49-52) as claimed in independent claim 17 and a progressive lens wherein the unwanted astigmatism is greater than the first add power (Tables 1 and 2, examples 1-6) as claimed in independent claim 18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Menezes et al. Menezes et al teaches a progressive addition lens comprising a first and second progressive addition surface wherein the total lens add power that is about the sum of the add power of the first and second progressive surfaces (column 2, lines 46-57) as claimed in independent claim 19.

Although Menezes et al fails to teach a maximum unwanted astigmatism of the lens having a value of about half of the total add power, the reference does suggest the dioptric add power is selected in view of the unwanted astigmatism (column 4, line 52-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the well-known design technique of Menezes et al to develop a progressive lens having an add power to unwanted astigmatism relationship in order to develop a lens to correct the wearer's vision acuity.

Allowable Subject Matter

Claims 2, 3 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7-14 are allowed.

Art Unit: 2873

The following is a statement of reasons for the indication of allowable subject matter:

The prior art taken either singularly or in combination fails to anticipate or fairly suggest the limitations of the independent claims, in such a manner that a rejection under 35 U.S.C. 102 or 103 would be proper. Although the prior art teaches a method for designing a progressive addition lens in which a merit function is used to optimize the lens surface, the prior art fails to teach a method for a lens having at least two progressive addition surfaces as claimed in independent claim 7.

Conclusion

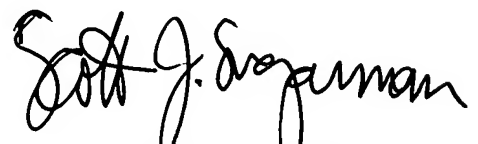
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darryl J. Collins whose telephone number is 571-272-2325. The examiner can normally be reached on 6:30 - 5:00 Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on 571-272-2328. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



djc


Scott J. Sugarman
Primary Examiner